

ZONING BOARD OF APPEALS
MEETING MINUTES
June 9, 2009
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, called meeting to order at 4:00 p.m.

ATTENDANCE:

Members Present: Rick Barnes, Greg Dunn, Gentry Hammons, Mike Fatt, Carlyle Sims, and John Stetler

Members Excused: Deland Davis, and James Moreno

Staff Present: Jill Steele, Asst. City Attorney; Brad Misner, Planning Supervisor; Glenn Perian, Senior Planner; and Leona Parrish, Planning Admin. Assistant.

ADDITIONS OR DELETIONS TO THE AGENDA: None

Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.

OLD BUSINESS:

Appeal #Z-08-09: (2545 Capital Avenue, S.W.)

Mr. Glenn Perian stated this was an appeal from the Hinman Co., Mr. Andy Wenzel, 750 Trade Centre Way, Portage, MI, requesting a sign variance to waive the maximum size of 50 sq. ft. and height of 12 ft.; also allow a front setback of 10 ft. from property line for property located at 2545 Capital Ave., S.W. Mr. Perian noted the handouts for the record: 1) Letter of support from Mr. William Pruzinsky, Director of Office of Occupancy Services for Michigan Department of State; 2) Letter of support from Mr. Todd Weidner, Williams Kitchen & Bath; 3) Revised Proposed Sign Plans, Mr. Andy Wenzel, Director of Development, The Hinman Co.

Mr. Perian noted they propose to increase the allowable sign size from 50 sq. ft. to approximately 162 sq. ft. and increase the height from allowable 12 ft. to approximately 21ft. and 8 inches, with a setback of 10 ft. instead of the required 25 ft. setback as stated in Chapter 1296. Said the board needs to look for something unique in this instance to approve and the staff report briefly outlines the Planning Departments thoughts on this request and also reminded the board that when they deliberate to state their findings for the record.

Mr. Andy Wenzel, Director of Development, The Hinman Co. 1234 Hole High Drive, Kalamazoo, MI, was present to speak; stated they have multiple uses on this site with retail use on the road frontage with office users below with a backside parking lot with the total building size of 34, 500 sq. ft. and has 294 feet of frontage on Capital Avenue, S.W. Said the current sign accommodates four tenants and identifies the Center "Capital Centre", with identifying the tenants on the lower level without having road frontage; noted the tenants on the main level have a setback of 200 ft plus feet from the road which

makes the sign on the building less visible from the road. Said they want a good visual and appealing sign that would be effective for the tenants.

Mr. Wenzel stated they contracted Sign Art to design a sign that would propose a sign that appeal to traffic and neighborhood properties and also be effective for up to 16 tenants. Stated they attended the Neighborhood Planning Council meeting who suggested they not have a reader board; this is why the changed and modified the visual design with no reader board. Mr. Wenzel stated the property is zoned "C-1 Neighborhood Commercial District" and to the north are "C-1", to the south are "C-2 General Business" then increases to C-6 Major Highway Interchange" as it is highway. Noted many of the adjacent signs are higher and larger then what they are proposing and are not out of the ordinary for what is in this neighborhood. He provided photos (hand-out) of visual and stated they do have the ability with their property to add another 50 sq. ft. sign that would need to be 25 ft. setback from road right-of-way that would be in the drive lane of the parking lot and it would be blocked by the other sign. Said it would be a problem to create another sign, which would also clutter the area. They want to make a good fit and investment in the neighborhood.

Mr. Gentry Hammons asked if not approved, what would be their hardship.

Mr. Wenzel stated there are several; 1) Have two uses with retail use on top and office on bottom which are separate and can have two signs, but you would have the clutter of two signs; 2) A setback of 25 ft. from the road and is unique, so the sign would not be visible; 3) a second sign would require placing the sign in the drive lane in the parking lot. Stated they have good tenants and if they used the current sign and just had the names noted it would not be effective with the traffic flow on Capital Avenue S.W.

Mr. Greg Dunn asked how many tenants are there currently.

Mr. Wenzel stated eleven (11) currently with one(1) open space and would like to look ahead and be ready for additional tenants; said they also note on the sign The Hinman Company's name.

Mr. Carlyle Sims stated that he commends them for omitting the reader board as he feels it is better for the neighborhood.

Mr. Rick Barnes noted that the Neighborhood Planning Council stated they did not like the reader board; asked what their feelings were regarding the rest of the signage.

Mr. Wenzel stated yes, he attended the NPC meeting and did not have with him the drawing that the board has before them currently, which would have been helpful. Stated there were about 15 persons at the meeting; some comments ranged from "in this economy and if they have the dollars, why not approve" others approved without the reader board. Said they were going to vote on approval of the presented plan without the reader board. The Chairperson, Mr. Champlin suggested they not support as presented; it was not denied and wanted a postponement, but were not going to meet again for 3 months.

Mr. Mike Fatt asked if there was anything different regarding the circumstances today then when they built the original sign, such as number of suites etc.

Mr. Wenzel stated he was not sure how long the original sign has been there or what changes have occurred in the ordinance; said thy had build the sign as large as the ordinance has allowed at that time

and it has been an ongoing issue and with the Secretary of State moving there it has been a bigger issue with customers not finding the business.

Mr. Greg Dunn asked what the difference is in the sign dimensions from the proposed original size requested. Mr. Wenzel stated it is now smaller by 1-foot.

Mr. Glenn Perian stated the new proposed is just under 162 sq. ft. and the original was 174 sq. ft.

Mr. Wenzel said the current sign is 95 sq. ft. and can do a new one at 50 sq. ft. without needing a variance which would equal 145 sq. ft. Said the one designed is reasonable and readable and have met the minimum and most effective sign size.

Mr. Greg Dunn said in his appeal they made reference to the requirements for this location and other community signs that had been allowed. He asked Mr. Wenzel to elaborate on that reference.

Mr. Andy Wenzel stated an example was Stadium Drive in Kalamazoo's new Shopping Center which has a sign 3 times the size with a reader board and is effective with no complaints. Said they are located where the old bowling lanes used to be, which is on the fringe of Winchell neighborhood, Rambling Road residences and commercial zoning that goes into residential area. Noted in Battle Creek on Helmer Rd. the Columbia Center has a similar larger sign and also the corner of Capital and Columbia. Stated in the Battle Creek area there are not many "C-1 Neighborhood Commercial" zoning districts.

Mr. John Stetler stated the State of Michigan has small wall sign; asked if they went with the largest wall sign possible.

Mr. Gentry Hammons asked what would be the problem with raising the tenant sign 4 ft. for visibility. Mr. Wenzel stated visibility was not a problem, it is the signage area and that persons cannot read when driving by in a car.

Mr. Gentry Hammons asked if they were comparing their sign to the other signs in the area. Mr. Wenzel stated yes, in the hand-out provided it shows the height and square footage of signs in the area for example Red Lobster is 33 ft. tall, Bank on north side is 17 ft. tall, AltaVista to the north is 23 ft. tall; are all taller than what they are proposing. They are asking for the same equality as others around them.

Mr. Greg Dunn asked if they were aware of the criteria that they cannot base a practical difficulty or hardship decision on the other signs around them. Mr. Wenzel stated they do feel they have a hardship. Mr. Dunn stated that the board needs to determine the hardship if any.

Mr. Carlyle Sims stated that when the Battle Creek Township was annexed with the City of Battle Creek is when these different sign heights occurred. Stated those that are higher are old signs from the Township; this is why the signs are all different heights in that area. Said that once you allow them to be higher then everyone would also want the same approval.

Mr. Brad Misner stated that Mr. Hammons suggested raising the sign higher; this would also need Zoning Board approval. Noted what Mr. Dunn stated is correct, that the variance findings regarding the older larger signs; the ordinance states they **shall not** consider that in looking at how they look at larger signs.

Mr. Steve Vanderslute, Sign Art, 57 E. Cork St, Kalamazoo, MI, stated he has ten(10) years in the business and have seen many changes in the ordinance, etc. as changes occur; said they are sensitive to those changes and try to keep with what the neighborhoods liking. Said they met with Mr. Glenn Perian, Senior Planner to get a feel for what would fit in that neighborhood and with traffic, etc. and be good neighbors. They are trying to keep consistent with what is in the neighborhood and meet everyone's needs. Said they are trying to use the current sign if possible and feels the City Planning staff support this variance request for this zoning district.

Mr. Todd Widener, Williams Kitchen & Bath, 10497 3 Mile Rd, East LeRoy, MI, stated their store has been at this location since 2003 and started with 8 staff persons and now has 3 persons. Said they have fought for a larger sign since then and has affected their business. Said customers say it is hard to find their store and no one has heard of their business. If they would have to move or close their business it would be a hardship to the owner (The Hinman Co.) etc. (Noted they submitted a letter of support)

Mr. William Pruzinsky, Michigan Department of State, 2383 Ava, Howl, MI, stated he is here today in support. Said they send out customer satisfaction cards and they have shown at least 20 per month stated they cannot find their new office. Noted they could have done a temporary sign, but it is only good for 14 days. They put up a smaller sign than allowed because of recycling of signs; said they reused a sign from another location because of cost saving measures. With the consolidating of some of their other locations they might have another larger one they can use from one of those locations.

Mr. Greg Dunn asked Mr. Pruzinsky how many persons they serve. Mr. Pruzinsky stated the old Battle Creek office handled about 135,000 transactions a year. For them that is about 2/3 ratio, as persons come in to do more than one transactions at a time. They figure there was between 90 – 100 thousand persons coming through the office. With the consolidation of Marshall they expect those transactions to be about 220,000, which is almost double and have increase the office and staff size accordingly. Said other nearest locations are in Kalamazoo, Portage, Albion, Jackson, Coldwater, Sturgis and Hastings or Lansing; so their foot print is large and now call it the Calhoun County Plus Office.

Mr. Greg Dunn stated their foot print is larger than just the Battle Creek area and person from out-of-town needing to locate the Secretary of State Office might not be familiar with the Battle Creek area. Mr. Pruzinsky stated yes; that is correct.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. CARLYLE SIMS MADE A MOTION TO APPROVE # Z-08-09 SIGN VARIANCE AS SUBMITTED WITHOUT THE READER BOARD FOR PROPERTY LOCATED AT 2545 CAPITAL AVE., S.W., SUPPORTED BY MR. GREG DUNN.

Discussion:

Mr. Greg Dunn stated he finds they have a practical difficulty as the Michigan Secretary of State office has persons from out-of-town needing to find their location. The geographic territory is wide and difficult to find and with a possible 16 tenants needing signage it is better to have one sign instead of two signs. It would not be outside of character of the area and other signs. They had attended the Neighborhood Planning Council meeting and notices went out to residents within 300 ft. without any opposition.

Mr. Glenn Perian the Planning Department noted they had received two letters in opposition, which were included in today's meeting packet.

Mr. Greg Dunn feels there could be a practical difficulty of traffic flow with persons driving slow looking for their location and turning causing traffic issues.

Mr. John Settler asked if they could make a second motion to approve the 10 ft. setback or request the issues to be separated.

Ms. Jill Steele stated because the application notes three separate requests; it might be best to treat them as separate motions and need to make note of the findings on Chapter 1296.31.

MOTION: MR. GREG DUNN MADE A MOTION TO APPROVE # Z-08-09 SIGN VARIANCE FOR THE SIGN PLACEMENT TO ALLOW A 10 FT. SETBACK RATHER THAN THE 25 FT. SETBACK FOR PROPERTY LOCATED AT 2545 CAPITAL AVE., S.W., SUPPORTED BY MR. RICK BARNES.

Reasons for Motion:

Mr. Greg Dunn stated he finds a hardship because of the amount of parking spaces in the facility and high use of the commercial businesses and Secretary of States office and believe they should not have to follow the 25 ft. variance because of those reasons and is exceptional as everyone does not have the Secretary of States office on their property or that level of vehicles coming onto their parking lot.

Ms. Steele stated if they looked to section (h) allowing the variance will result in substantial justice being done considering the public benefits as stated in Chapter 1296.31 (h)

Mr. Greg Dunn stated he thinks it is exceptional and peculiar because of the building 200 ft. setback and the convenience to the city as it would allow for more egress and regress from the parking lot.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; ALL IN FAVOR; NONE OPPOSED: MOTION APPROVED.

AMMENDED MOTION: MR. CARLYLE SIMS MADE A MOTION TO APPROVE # Z-08-09 SIGN VARIANCE AS SUBMITTED TO ACCEPT BOTH THE SIGN HEIGHT AND SQUARE FOOTAGE AS SUBMITTED FOR PROPERTY LOCATED AT 2545 CAPITAL AVE. S.W., SUPPORTED BY MR. GREG DUNN.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; THREE (DUNN; SIMS; AND BARNES IN FAVOR; THREE (FATT; HAMMONS; AND STETLER OPPOSED: MOTION FAILED.

Vote Findings and Comments:

Mr. Greg Dunn noted that he feels the height is smaller than what was requested and represents a compromise and thinks there is substantial justice in that the businesses and people who are patronizing those commercial and Secretary of States offices will have an easier method of finding those business

locations. Said he thinks there is practical difficulty and hardship both for the tenants and those who would use that facility for business especially with the Secretary of State as being unique situation existing across the other properties within the city; he votes yes.

Mr. Mike Fatt stated he does not see a practical hardship that is not of their own making. Said the Secretary of State Office change locations often and might not want to lock themselves into a sign based on something that fluid. Stated they are dealing with a situation that is an area that is unique in the sense that it is close to residential neighborhoods, closer than what is sited in the packet and closer than what was sited in Kalamazoo; he will be voting no.

Mr. Gentry Hammons stated he is voting no and is in agreement with Mr. Fatt's comments.

Mr. Carlyle Sims is voting yes; he was in support as they show practical difficulty. Said The Hinman Co. has come forward to help those who are leasing their buildings and during these economic times they need to support every business in Battle Creek as they can as it is better to see the buildings full than with weeds growing over them. Feels it is unique situation and important that they removed the request for a reader board; Neighborhood Planning Council approved and think they have done a good presentation to the board and commend their work on this request.

Mr. John Stetler said he is voting no; said they have a fine quality owner and developer who has done a great job with their buildings. He is not support because he does not see a hardship or practical difficulty and feels it is buffer zoning between the two uses.

Mr. Rick Barnes stated he is voting yes.

Mr. John Stetler stated the variance has been denied and they do have an option to appeal to the Circuit Court.

Mr. Brad Misner stated for clarification; the front yard variance request has been approved and they can put a new sign at that location that would meet the city requirements and also keep the existing sign.

NEW BUSINESS: None

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. GENTRY HAMMONS TO APPROVE THE MAY 12, 2009 ZONING BOARD OF APPEALS MINUTES; SUPPORTED BY MR. MIKE FATT. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. John Stetler stated our next meeting is scheduled for July 14, 2009.

Mr. Glenn Perian stated regarding the petition for 2510 Capital Avenue S.W., which was postponed at last months meeting; said they met with the Planning staff and may have a solution that does not require a variance or may possibly rework their petition and bring back to the board at a later date.

Mr. Brad Misner stated if we do not receive any petitions for next months meeting; we may still hold a workshop session for that date and time.

Mr. Greg Dunn asked regarding today petition and having a tie vote, being denied; does that disqualify them from any further appeal for a 12 month period regarding the size or height

Mr. Glenn Perian stated that the ordinance speaks of a changed condition; there would need to be a changed condition for them to come back within 12 months

Mr. Misner stated if they were to come back with a different size, height and width; but still within what the code allows it would be a new application and come back before the board.

Mr. Andy Wenzel asked since the 10 ft. setback has been approved; and are allowed today to put another 50 ft sign up; does that mean they can put the additional sign with the 10 ft. setback. Answer: Yes

Mr. Wenzel asked if the existing sign can be refaced as long as it is not taller and larger in square footage. Mr. Glenn Perian stated, correct they may reface the current sign and also put up a new sign with a 10 foot setback.

Mr. Wenzel asked if they can put up a new sign that is the same size and height where the existing one is located. He said that 33% of the current sign says "Capital Centre", he would rather help the tenants than advertized the centre in general. Mr. Perian said they can utilize that portion of the sign for tenants.

Mr. Dunn encourages Mr. Wenzel to work with the staff and explore their options. Mr. Wenzel agreed.

ADJOURNMENT: Mr. Greg Dunn moved for the meeting to be adjourned; meeting was adjourned at 5:05 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department